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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,454	01/07/2002	Shoji Nishikawa	05905.0155	4922
22852	7590	05/18/2006	EXAMINER	
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER LLP 901 NEW YORK AVENUE, NW WASHINGTON, DC 20001-4413			WILDER, PETER C	
			ART UNIT	PAPER NUMBER
			2623	

DATE MAILED: 05/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,454

Applicant(s)

NISHIKAWA ET AL.

Examiner

Peter C. Wilder

Art Unit

2623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) 1-31 and 36-39 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Note to Applicant

Art Units 2611, 2614 and 2617 have changed to 2623. Please make all future correspondence indicate the new designation 2623.

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18, 27, 28, 29, 30, and 31 drawn to distribution device and method for resending data, classified in class 725, subclass 105.
 - II. Claims 19-26 drawn to device and method for updating software program, classified in class 725, subclass 132.
 - III. Claims 32-35, drawn to device and method comprising displaying a selection screen of the content to be updated in a different manner from a selection screen of the other received content, classified in class 725, subclass 37.
 - IV. Claims 36-39, drawn to device and method comprising receiving a content distribution guide and displaying a reception reservation guide screen by distinguishing any un-received content from received content, classified in class 725, subclass 58.
2. The inventions are distinct, each from the other because of the following reasons:

Inventions I-IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable.

In the instant case, subcombination II has separate utility such as upgrading software in a PC.

In the instant case, subcombination III has separate utility such as selection screen display in a building lobby.

In the instant case, subcombination IV has separate utility such as content distribution over broadcast radio.

See MPEP § 806.05(d).

3. Because these inventions are independent or distinct for the reasons given above and have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

During a telephone conversation with Richard Burgujian on Friday April 28, 2006 a provisional election was made without traverse to prosecute the invention of Data distribution device and method and data receiving device and method, claims 32-35. Affirmation of this election must be made by applicant in replying to this Office action. Claims 1-31 and 36-39 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Objections

Claim 32 and 34 recites the limitation "the content to be updated" and "the other received content" in the second to last line of the claim.

The first reciting of the phrase "the content to be updated" should be changed to "content to be updated" and the reciting of the phrase "the other received content" should be changed to "other received content."

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32- 35 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nishikawa et al. (U.S. 6481010 B2) in view of Blackwell et al. (U.S. 6449654 B1).

Referring to claim 32, Nishikawa teaches a data receiving device (Figure 1 and Column 3 lines 43-45) comprising:

receiving means for receiving a content broadcasted in one direction by a broadcasting transmission system using a ground wave (Figure 1 element 20 and Column 3 lines 48-49 teaches an antenna which would receive a wave signal/content traveling parallel to the ground and Column 6 lines 52-56 teaches downloading program guide information and Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker); and

display means for displaying a selection screen of the received content (Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker), wherein, the data receiving device comprises display means for performing display processing to display a selection screen of the content to be updated (Column 3 lines 61-66 and Figure 1 element 12 teaches a processor and element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker and Column 6 lines 52-56 teaches downloading program guide information periodically) in a different manner from a selection screen of the other received content (Figure 13 element 660 and Column 14 lines 20-39 teaches content displayed in a different manner than content in Figure 7).

Nishikawa fails to teach displaying content while receiving data regarding the content to be updated.

Blackwell teaches displaying content while receiving data regarding the content to be updated (Column 14 lines 45-54 teaches continuously updating sports scores which means that the scores/data for a game can be displayed as content on the screen at the same time the scores/data are being received, Column 15 lines 16-26).

At the time the invention was made it would have been obvious for one skilled in the art to modify the displaying of received content in two manners function/device of Nishikawa using the continuous update and display function/device of Blackwell for the purpose of always keeping a viewer up to date on the score of a game that changes very frequently such as a basketball game.

Referring to claim 33, Nishikawa teaches a selection screen displaying method for displaying (Figure 13 teaches a selection screen), at the time of displaying a selection screen of a received content (Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker) which has been broadcasted in one direction by a broadcasting transmission system by means of a ground wave (Figure 1 element 20 and Column 3 lines 48-49 teaches an antenna which would receive a wave signal traveling parallel to the ground), a selection screen of the content to be updated (Figure 7 element 566 and Column 6 lines 53-56 teaches all data is updated) in a different manner from a selection screen of the other received content

(Figure 13 element 660 and Column 14 lines 20-39 teaches content displayed in a different manner than content in Figure 7) while receiving data regarding the content to be updated (Figure 7 element 566, Column 11 lines 56-67 and Column 12 lines 1-6 and Figure 9 teach a ticker that can display sports scores and can be selected)

Nishikawa fails to teach displaying received content while receiving data regarding the content to be updated.

In analogous art Blackwell teaches displaying received content while receiving data regarding the content to be updated (Column 14 lines 45-54 teaches continuously updating sports scores which means that when the scores are displayed they can also be updated and column 15 lines 16-26).

At the time the invention was made it would have been obvious for one skilled in the art to modify the displaying of received content in two manners function/device of Nishikawa using the continuous update and display function/device of Blackwell for the purpose of always keeping a viewer up to date on the score of a game that changes very frequently such as a basketball game.

Referring to claim 34 Nishikawa teaches a data receiving device (Figure 1 and Column 3 lines 43-45) comprising:

receiving means for receiving a content broadcasted in one direction via a cable network (Figure 1 element 20 and Column 3 lines 48-54 teaches an antenna which would receive a wave signal/content traveling parallel to the ground from a cable station so the content has to come from a cable network Column 6 lines 52-56 teaches

downloading program guide information and Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker); and

display means for displaying a selection screen of the received content (Figure 1 element 16 and Column 3 lines 43-48),

wherein, the data receiving device comprises display means for performing display processing to display a selection screen of the content to be updated in a different manner from a selection screen of the other received content (Figure 7 element 566, Column 11 lines 56-67 and Column 12 lines 1-6 and Figure 9 teach a ticker/content that can display sports scores and can be selected and Figure 13 element 660 and Column 14 lines 20-39 teaches program length content; Figures 7 and 13 look different thus display content in a different manner; Column 6 lines 52-56 teaches downloading/updating program guide information periodically).

Nishikawa fails to teach displaying received content while receiving data regarding the content to be updated.

In analogous art Blackwell teaches displaying received content while receiving data regarding the content to be updated (Column 14 lines 45-54 teaches continuously updating sports scores which means that when the scores are displayed they can also be updated and column 15 lines 16-26).

At the time the invention was made it would have been obvious for one skilled in the art to modify the displaying of received content in two manners function/device of Nishikawa using the continuous update and display function/device of Blackwell for the

purpose of always keeping a viewer up to date on the score of a game that changes very frequently such as a basketball game.

Referring to claim 35 Nishikawa teaches a selection screen displaying method for displaying (Figure 13 teaches a selection screen), at the time of displaying a selection screen of a received content (Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker) which has been broadcasted in one direction via a cable network (Figure 1 element 20 and Column 3 lines 48-54 teaches an antenna which would receive a wave signal/content traveling parallel to the ground from a cable station so the content has to come from a cable network Column 6 lines 52-56 teaches downloading program guide information and Figure 7 element 566 and Figure 9 and Column 11 lines 56-67 teaches content that is a sports ticker), a selection screen of the content to be updated (Figure 7 element 566 and Column 6 lines 53-56 teaches all data is updated) in a different manner from a selection screen of the other received content (Figure 13 element 660 and Column 14 lines 20-39 teaches content displayed in a different manner than content in Figure 7) while receiving data regarding the content to be updated (Figure 7 element 566, Column 11 lines 56-67 and Column 12 lines 1-6 and Figure 9 teach a ticker that can display sports scores and can be selected)

Nishikawa fails to teach displaying received content while receiving data regarding the content to be updated.

In analogous art Blackwell teaches displaying received content while receiving data regarding the content to be updated (Column 14 lines 45-54 teaches continuously

updating sports scores which means that when the scores are displayed they can also be updated and column 15 lines 16-26).

At the time the invention was made it would have been obvious for one skilled in the art to modify the displaying of received content in two manners function/device of Nishikawa using the continuous update and display function/device of Blackwell for the purpose of always keeping a viewer up to date on the score of a game that changes very frequently such as a basketball game.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Peter C. Wilder whose telephone number is 571-272-2826. The examiner can normally be reached on 8 AM - 4PM Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Grant can be reached on (571)272-7294. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

PW

A handwritten signature in black ink, appearing to read 'Chris Grant', is positioned above the printed name.

**CHRISTOPHER GRANT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800**